

## PAROLE BOARD[205]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 906.3, the Parole Board hereby adopts new Chapter 9, “Certificates of Employability,” Iowa Administrative Code.

The rules in Chapter 9 prescribe the application process for obtaining a Certificate of Employability and establish the authority of the Board of Parole in granting or revoking a Certificate of Employability in accordance with Iowa Code section 906.19 [2008 Iowa Acts, House File 2660, section 24].

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 19, 2008, as **ARC 7337B**. The Board received informal oral feedback on the rules in the form of in-person communications.

Due in part to the feedback received, changes have been made to the rules that were published under Notice of Intended Action. The rules have been revised in order to better conform the chapter to the requirements of 2008 Iowa Acts, House File 2660, section 4. The revisions are a logical outgrowth of the rules published under Notice and the comments received in response to the rules. The following changes have been made since publication of the Notice of Intended Action:

1. The definition of “Eligible offender” has been changed. The second sentence has been removed and a new sentence has been inserted in lieu thereof.

2. In subrule 9.3(3), the last sentence has been removed and a new sentence has been inserted in lieu thereof.

3. In subrule 9.3(4), regarding granting a certificate of employability, the original sentence has been removed and a new sentence has been inserted in lieu thereof.

The Board adopted this amendment on January 8, 2009.

This amendment will become effective on June 10, 2009.

This amendment is intended to implement Iowa Code section 906.19 [2008 Iowa Acts, House File 2660, section 24].

The following amendment is adopted.

Adopt the following **new** 205—Chapter 9:

### CHAPTER 9 CERTIFICATES OF EMPLOYABILITY

**205—9.1(906) Definitions.** As used in this chapter:

“*Direct relationship*” means that the nature of criminal conduct for which the eligible offender was convicted has a direct bearing on the offender’s fitness or ability to perform one or more of the duties or responsibilities necessarily related to the certificate of employability sought.

“*Eligible offender*” means a person who has been convicted of one or more than one eligible crime or eligible offense and has been sentenced to the custody of the director of the Iowa department of corrections. Persons required to register under Iowa Code chapter 692A are ineligible for the certificate of employability program.

“*Employment*” means any occupation, vocation or employment, or any form of vocational or educational training. For the purposes of this chapter, “employment” shall not include membership in any law enforcement agency.

“*Private employer*” means any person, company, corporation, labor organization or association.

“*Public agency*” means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

**205—9.2(906) Certificates of employability.**

**9.2(1)** The provisions of this chapter shall apply to any application by an eligible offender to any public agency or private employer for employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon. The provisions

of this chapter shall also apply to an application to a licensing agency by an eligible offender to obtain licensure required for employment.

**9.2(2)** When a certificate of employability is presented to a public agency, the licensing agency cannot deny a license based on the felony conviction or based on a lack of good moral character, unless the agency makes a determination that there is a direct relationship between the offense and the license sought or that the issuance of the license involves unreasonable risk to property or the safety and welfare of specific individuals or the general public.

**9.2(3)** A certificate of employability shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege in accordance with the provisions set out in this chapter.

**205—9.3(906) Issuance of a certificate by the board of parole.**

**9.3(1)** The board of parole may issue a certificate of employability to an offender who has been committed to an institution under the jurisdiction of the department of corrections. Such certificate may be issued by the board at the time the offender is released from such institution under the board's authority or at any time thereafter. The board shall only issue a certificate of employability to an offender who obtains a positive recommendation from the department of corrections or community-based corrections in the state of Iowa.

**9.3(2)** The board of parole shall not issue any certificate of employability pursuant to this chapter unless the board is satisfied that:

- a. The person to whom it is to be granted is an eligible offender;
- b. The relief to be granted by the certificate is consistent with the employability of the eligible offender; and
- c. The relief to be granted by the certificate is consistent with the public interest.

**9.3(3)** Any certificate of employability issued by the board of parole to an eligible offender shall be deemed to be a temporary certificate until such time as the eligible offender is discharged from the board's supervision. Such a certificate may be revoked by the board, by the board's designee, or by an administrative parole judge for violation of the conditions of release or new arrest. Revocation shall be upon notice to the offender, who shall be accorded an opportunity to explain the violation prior to a decision thereon in accordance with subrule 9.3(5) below. After an eligible offender discharges all indictable criminal offenses imposed by the state of Iowa, the certificate of employability will only be revoked if it is determined that the certificate was obtained as the result of fraud or deceit or if the eligible offender is subsequently convicted in Iowa, or any other jurisdiction, of a crime that has a maximum penalty of two or more years of incarceration, in which case the certificate of employability shall be automatically revoked.

**9.3(4)** In the granting of a certificate of employability, the number of votes required to grant the certificate will be determined by the board of parole risk assessment score as set out in 205—subrules 8.15(2) to 8.15(4).

**9.3(5)** A certificate of employability may be revoked by the decision of an administrative parole judge or the board's designated officer at a parole revocation hearing held pursuant to rule 205—11.7(908). A certificate of employability may also be revoked at any time by affirmative vote of three or more of the parole board members.

**9.3(6)** The board may conduct an investigation of the applicant for the purpose of determining whether a certificate of employability shall be issued.

**9.3(7)** Any applicant whose application for a certificate of employability has been denied shall have the right to an appeal to the board of parole if the applicant initiates an appeal within ten days of written receipt of initial decision. Any appeal must be on an official board of parole appeal form.

**205—9.4(906) Effect of revocation; use of revoked certificate.** Where a certificate of employability is deemed to be revoked, disabilities and forfeitures relieved by the certificate shall be reinstated as of the

date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the board of parole.

**205—9.5(906) Forms and filing.**

**9.5(1)** All applications, certificates and orders of revocation necessary for the purposes of this chapter shall be upon forms prescribed by the board of parole and in accordance with policies adopted by the board.

**9.5(2)** The parole board issuing or revoking any certificate pursuant to this chapter shall immediately file a copy of the certificate, or of the order of revocation, with the department of corrections and with any affected licensing agency.

**205—9.6(906) Certificate not to be deemed a pardon.** Nothing contained in this chapter shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

These rules are intended to implement Iowa Code section 906.19.

[Filed 4/10/09, effective 6/10/09]

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